National Labor Relations Board



Weekly Summary of NLRB Cases

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Champion Home Builders Co. a Subsidiary of Champion Enterprises Inc. (32-CA-17185; 343 NLRB No. 77) Lindsay, CA Nov. 19, 2004. The administrative law judge found, and Members Schaumber and Meisburg, with Member Walsh concurring, held that the Respondent violated Section 8(a)(1) of the Act by discharging Ramon Rivas because of his protected concerted activity in complaining to other employees about the Respondent's employee production system and posting a letter about it. [HTML] [PDF]

The majority reversed the judge's finding that the Respondent violated Section 8(a)(1) by failing and refusing to stay or seek the dissolution of the restraining order issued against Rivas by the California State court. The restraining order, following the hearing to show cause, prohibited Rivas from, among others, coming within 50 yards of the Respondent's facility and contacting the Respondent's employees during working hours.

Members Schaumber and Meisburg determined that nothing in the Act prevented the State court from enjoining Rivas from engaging in acts of violence or intimidation and the State court lawsuit was not preempted upon the issuance of the complaint alleging that the Respondent had unlawfully discharged Rivas. They found that the judge's analysis failed to explain why the State court lawsuit was preempted upon issuance of the complaint alleging that Rivas has been unlawfully discharged and why it was unlawful for the Respondent to fail to stay or seek the dissolution of the lawsuit.

Contrary to his colleagues, Member Walsh would find that the Respondent violated Section 8(a)(1) as found by the judge by failing and refusing to seek or stay the dissolution of the restraining order against Rivas. He concluded that the evidence does not support a claim that the lawsuit against Rivas was actually based on threats of violence. Member Walsh wrote that the documents and allegations submitted by the Respondent to the court in pursuit of a lawsuit against Rivas were based on the same conduct by Rivas that the General Counsel alleged was protected by the Act in the unfair labor practice proceeding.

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Carpenters Local 1109; complaint alleged violation of Section 8(a)(3). Hearing at Visalia on Sept. 21, 1999. Adm. Law Judge Jay R. Pollack issued his decision May 16, 2000.

Crittenton Hospital (7-CA-42695, et al.; 343 NLRB No. 81) Rochester, MI Nov. 23, 2004. The Board affirmed the administrative law judge's findings that the Respondent committed several unfair labor practices affecting its hospital employees who are represented in separate bargaining units by four Unions. Among others, it held that the Respondent violated Section 8(a)(5) of the Act by refusing to provide OPEIU Local 40 information concerning the discipline of nurse Adelaida Cruz, and by requiring the registered nurses (RNs) to become certified in advance cardiac life support without providing prior notification to OPEIU Local 40 and affording it the opportunity to bargain about the change and dealing directly with the bargaining unit employees. [HTML] [PDF]

The Board agreed with the judge's finding, but it relied on a different rationale, that the Respondent failed to respond to the OPEIU's request for information concerning unresolved pending grievances filed by OPEIU's predecessor, the Michigan Nurses Association.

Concluding that the General Counsel failed to establish that the parties agreed to retain two disputed provisions in the finalized collective-bargaining agreement, the Board reversed the judge's finding that the Respondent violated Section 8(a)(5) and (1) by deleting two provisions from the prior collective-bargaining agreement with SEIU Local 79 for the LPN unit, refusing to reinsert them, and refusing to execute a final agreement containing those provisions.

The Board amended the judge's recommended Order to require the Respondent to provide the requested information to the extent consistent with the Board's findings and that the Respondent reimburse the employees represented by the four Charging Parties Unions for any and all losses they incurred by virtue of the Respondent's unlawful unilateral changes in employees' terms and conditions of employment.

(Chairman Battista and Members Schaumber and Meisburg participated.)

Charges filed by Office Employees Local 40, Service Employees Local 79, Rochester Crittenton Medical Laboratory Employees Assn. (RCMLEA), and Rochester Crittenton Radiological Employees Assn. (RCREA); complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit, Jan. 8-10, 2001. Adm. Law Judge C. Richard Miserendino issued his decision Nov. 13, 2001.

The Hearst Corp. Capital Newspaper Division (3-CA-22256; 343 NLRB No. 79) Albany, NY Nov. 19, 2004. The Board adopted the recommendations of the administrative law judge and held that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to deduct and remit to Newspaper Guild of Albany Local 31034 dues and/or fees owed by employee Valeria Shea. [HTML] [PDF]

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Newspaper Guild of Albany Local 31034, CWA; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Albany on April 30, 2001. Adm. Law Judge Wallace H. Nations issued his decision Aug. 30, 2001.

Midwest Television, Inc., d/b/a KFMB Stations (21-CA-32858; 343 NLRB No. 83) San Diego, CA Nov. 23, 2004. Members Schaumber and Meisburg affirmed the administrative law judge's finding that the Respondent did not violate Section 8(a)(5) of the Act either by reducing employee Harry Clement's above-scale salary to the contractual rate or by insisting to impasse on a permissive subject of bargaining. They reversed the judge's finding that the Respondent violated Section 8(a)(1) by soliciting the decertification of the Union (AFTRA Local 225) and Section 8(a)(3) by reducing Clement's wages to union scale and by constructively discharging Clement based on his pay reduction and, accordingly, dismissed the complaint. [HTML] [PDF]

Member Walsh, dissenting in part, joined the majority decision except he found that the Respondent violated Section 8(a)(5) by unilaterally reducing Clement's above-scale salary, a wage topic that is a mandatory subject of bargaining. Agreeing with his colleagues' dismissal of the allegation that the reduction in Clement's pay violated Section 8(a)(3), Member Walsh found, in light of the finding that Clement was not treated disparately, it unnecessary to address—as does the majority in assuming arguendo disparate treatment—the alternative theory that the reduction was inherently destructive of employee rights under *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967).

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Harry Clement, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at San Diego, Jan. 16-18, 2001. Adm. Law Judge Lana H. Parke issued her decision May 4, 2001.

Rhee Brothers, Inc. (5-CA-29127; 343 NLRB No. 80) Columbia, MD Nov. 23, 2004. Chairman Battista and Member Liebman, with Member Meisburg concurring, adopted the recommendations of the administrative law judge and held that the Respondent violated Section 8(a)(1) of the Act by, among others: discharging Ui Dal Kim, Nak Hoon Chong, Kwang Joon Park, Man Ho Kim, and Chul Hyun Chong because they concertedly complained regarding the abusive treatment by a supervisor and because they engaged in a strike in support of their complaint; issuing a notification letter to its striking employees telling them that the strike was totally unacceptable; and interrogating employees concerning their own and other employees' union activities and about the subject of unfair labor practice proceedings. [HTML] [PDF]

It affirmed the judge's finding that the Respondent violated Section 8(a)(1) by interrogating employee Sang Hui Yun about the strike at the Respondent's facility without providing the safeguards required by *Johnnie's Poultry*, 146 NLRB 770, 775 (1964) enfd. denied 344 F.2d 617 (8th Cir. 1965). Agreeing with the Respondent that employee Bok Hwan Bae was given the *Johnnie's Poultry* safeguards, the Board reversed the judge's finding that the interrogation of Bae was unlawful.

Member Meisburg wrote separately to address the issue of whether employee Hee Wong Kim was the agent of other employees when he told President Rhee that the employees would refrain from striking. The Respondent claimed that Kim created an enforceable agreement not to strike on behalf of the other employees but produced no evidence that the employees authorized Kim to make any such agreement. Member Meisburg found that those employees were not bound by Kim's purported agreement and therefore, their failure to delay the strike did not cause them to lose the protections of the Act. Chairman Battista and Member Liebman agreed with the judge's finding that Kim made no promise that those employees would refrain from striking and found it unnecessary to address that issue.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Ui Dal Kim, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Baltimore on various days in May, July, Sept., and Nov. 2001, and Jan. and Feb. 2002. Adm. Law Judge Leonard M. Wagman issued his decision Jan. 8, 2003.

French Redwood, Inc. d/b/a Sofitel San Francisco Bay (20-RC-17923; 343 NLRB No. 82) Redwood City, CA Nov. 24, 2004. Members Schaumber and Meisburg held that the hearing officer erred in overruling the Employer's Objection 2 alleging that Cemetery Workers SEIU Local 2 misled voters to believe that the government favored the Petitioner in the election. Accordingly, they sustained the Employer's Objection 2, set aside the election held February 18, 2004, and directed a second election. They found it unnecessary to rule on the hearing officer's recommendation to overrule the Employer's remaining objections. The tally of ballots showed 27 votes for and 24 against, the Petitioner, with no challenged ballots. [HTML] [PDF]

The objection in question concerned a photocopy of an altered sample ballot which the Petitioner distributed to several employees. The Employer argued that the hearing officer erred in finding that the handwritten markings on the document would lead a voter to believe it was from the Petitioner.

In dissent, Member Walsh wrote that he would adopt the hearing officer's recommendation to overrule the Employer's objection stemming from what he found to be campaign propaganda and issue a certification of representative.

(Members Schaumber, Walsh, and Meisburg participated.)

DECISION OF ADMINISTRATIVE LAW JUDGE

Liberty Source W, LLC, and Trafford Distribution Center, Alter Egos (Federation of Independent Salaried Unions and Electrical Workers (IUE) Local 601) Trafford, PA Nov. 24, 2004. 6-CA-33661, 33729; JD-113-04, Judge Paul Bogas.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the general Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

All Purpose Services, Inc. (Butte-Anaconda Painters Local 720) (19-CA-29261, 29318; 343 NLRB No. 85) Missoula, MT November 24, 2004. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Mission Foods Tempe, Tempe, AZ, 28-RC-5987, November 22, 2004 (Members Liebman, Schaumber, and Walsh)

Progressive Molded Products, Inc., St. Joseph, MO, 17-RC-12258, November 26, 2004 (Members Liebman, Schaumber, and Walsh)

DECISION AND DIRECTION[that Regional Director open and count ballots]

Astoria Steel and Wire, Inc., Bedford, IL, 13-RC-21194, November 23, 2004 (Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Pizza Hut, Kent, OH, 8-RC-16660, November 22, 2004 (Members Liebman, Schaumber, and Walsh)

American Management Services California, Inc., Fort Irwin, CA, 31-RC-8441, November 23, 2004 (Members Liebman and Walsh; Members Schaumber dissenting)

Bell Medical Center, Ishpeming, MI, 18-UC-404, November 24, 2004 (Members Liebman, and Walsh; Member Schaumber dissenting)

CCG Holdings, Inc., Chatham, NJ, 28-UC-524, November 24, 2004 (Members Liebman, Schaumber, and Walsh)

Inter-Con Security Systems, Inc., Pasadena, CA, November 24, 2004 (Members Liebman, Schaumber, and Walsh)

Laurel Baye Healthcare of Lake Lanier, LLC, Buford, GA, November 24, 2004 (Members Liebman, Schaumber, and Walsh)

Miscellaneous Board Orders

DECISION ON REVIEW AND ORDER [remanding to Regional Director for further appropriate action]

Unison Behavioral health Group, Inc., Toledo, OH, 8-RC-16492, November 23, 2004 (Chairman Battista and Members Liebman and Schaumber)